



# Memo

**Water Resources Division  
Water Management Bureau**

To: WPIC

From: DNRC WMB

Date: July 24, 2020

Re: **Comments on Weather Modification Bill Draft PD0006**

---

**85-3-101 – Page 1 line 22**

Language limiting the project to “one year” is struck here but the license (line 28, page 4) is explicitly limited to one year only.

**85-3-103 – Page 2, line 19**

This provision has the state acting for, and representing, private entities. DNRC Legal Unit should complete thorough review if the bill is advanced.

**85-3-202 – Page 3, lines 11-19**

This provision may be problematic as it limits the department to conduct not more than an environmental assessment. An exception from an EIS may be legal under MEPA (DNRC legal and/or Legislative staff should review), however, this provision alone is likely to create controversy for this legislation. A cleaner solution would be to instruct the department to conduct an environmental analysis pursuant to the relevant statute and let the MEPA process play out. While cloud seeding may not be likely to trigger an EIS, this legislation does not limit weather modification to only cloud seeding. What about future climate engineering technologies? Under this draft bill those activities would also be exempt from a complete environmental analysis.

Possible language: The department is required to conduct an environmental analysis pursuant to Title 75, chapter 1, part 2 as the necessary level of environmental review for a weather modification license pursuant to this chapter.

**85-3-203 – Page 4, line 3**

Current department rules are found in 36.20 ARM. Some of the rule language required in this section is currently in Rules 36.20.202, 36.20.302, 36.20.303 and 36.20.308. The department may be able to draw on existing language for any new rules that are required, while some new rules will have to be developed.

**85-3-203 – Page 4, line 6**

This provision requiring the “applicant” to file a notice of intention appears to conflict with 85-3-208 (Page 5, line 21) requiring the “licensee” to file a notice of intention with the department. It also appears to conflict with 85-3-210 (Page 6, line 21) requiring the “licensee” to publish the notice of intention. The “applicant” does not become a “licensee” until the department grants them a license which the department can’t do until the “applicant” shows proof that they published sufficient notice of intention. Is it the “applicant” or the “licensee” that is supposed to publish the notice of intention?

**85-3-203 – Page 4, line 18**

The term “permit” was struck throughout the document yet inserted here. Should read “license”.

**85-3-204 – Page 4 line 28**

Limiting the license to one year seems challenging for implementation for both the department and the licensee. Weather modification projects take at least 3 to 5 years to verify results. Perhaps a review after one year leaving the department the discretion to renew for up to 5 years with an annual review. The department’s review would ensure that the operation still meets the provision of 85-3-203 (d)

**85-3-208 – Page 5, line 12**

Additional confusion with respect to the notice of intention (line 6 of page 4, lines 6 and 21 of 5). Is it the name and address of the applicant or the name and address licensee?

**85-3-210 – Page 5, line 21**

Is it the licensee or the applicant who files the notice of intention?

**85-3-211 – Page 6, line 9**

Nothing in this section caps limits in damages an operator could be found responsible for. It sets a floor on amount of insurance coverage applicant would have to show proof of. The legislature should encourage the operator to carry a higher level of coverage by setting the minimum liability policy to \$1 million.

**Unofficial Draft Copy**

As of: 2020/06/18 06:55:54 2020/08/05 04:14:13  
 Drafter: Corina Hach, 406-444-4026

PD 00060013

\*\*\*\* BILL NO. \*\*\*\*

INTRODUCED BY \*\*\*\*

BY REQUEST OF THE \*\*\*\*

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE WEATHER MODIFICATION AND CONTROL STATUTES; AMENDING THE ENVIRONMENTAL REVIEW REQUIREMENTS FOR WEATHER MODIFICATION AND CONTROL ACTIVITIES; REMOVING THE PERMITTING REQUIREMENT; AMENDING THE LICENSING REQUIREMENTS; AMENDING SECTIONS 85-3-101, 85-3-103, 85-3-201, 85-3-202, 85-3-203, 85-3-204, 85-3-208, 85-3-209, 85-3-210, 85-3-211, 85-3-213, 85-3-214, 85-3-301, AND 85-3-302, MCA; REPEALING SECTIONS 85-3-102, 85-3-206, 85-3-207, AND 85-3-212, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 85-3-101, MCA, is amended to read:

**"85-3-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area ~~over~~ one continuing time interval, not exceeding 1 year.

(3) "Research and development" means theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(4) "Weather modification and control" means changing or controlling or attempting to change or control, by artificial methods, the natural development of atmospheric cloud forms or precipitation forms that



**Unofficial Draft Copy**

As of: 2020/06/18 06:56:54 2020/08/05 04:14:13

Drafter: Corina Hach, 406-444-4026

PD 00060013

67th Legislature

1 occur in the troposphere. Weather modification and control includes but is not limited to cloud seeding.

2  
3 **Section 2.** Section 85-3-103, MCA, is amended to read:

4 **"85-3-103. Department powers.** In addition to any other acts authorized by law, the department may:

5 (1) acquire materials, equipment, and facilities as are necessary to perform its duties under this  
6 chapter;

7 (2) receive any funds which may be offered or become available from federal grants or  
8 appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, expend  
9 the funds for the administration of this chapter;

10 (3) make such studies and investigations and obtain such information as the department may deem  
11 necessary in exercising its authority in the administration or enforcement of this chapter;

12 (4) cooperate with public or private agencies in the performance of the department's functions or  
13 duties and in furtherance of the purposes of this chapter;

14 (5) represent the state in any and all matters pertaining to plans, procedures, or negotiations for  
15 interstate compacts relating to weather modification and control;

16 (6) enter into cooperative agreements with the United States government or any of its agencies, with  
17 the various counties and cities of this state, or with any private entities or public agencies for conducting  
18 weather modification or cloud seeding operations;

19 (7) act for and represent the state and the counties, cities, and private entities or public agencies in  
20 contracting with private concerns for the performance of weather modifications or cloud seeding operations;  
21 and

22 (8) conduct and make arrangements, including contracts and agreements, for the conduct of research  
23 and development activities relating to:

24 (a) the identification and evaluation of meteorological, environmental, ecological, agricultural,  
25 economic, hydrological, and sociological impacts of weather modification in Montana;

26 (b) the theory and development of methods of weather modification and control, including processes,  
27 materials, and devices relating thereto;

28 (c) the utilization of weather modification and control for agricultural, industrial, commercial,

Unofficial Draft Copy

As of: 2020/08/18 06:55:54 2020/08/05 04:14:13

Drafter: Corina Hach, 406-444-4026

PD 00060013

67th Legislature

recreational, and other purposes;

(d) the protection of life and property during research and operational activities."

**Section 3.** Section 85-3-201, MCA, is amended to read:

**"85-3-201. License and permit required for weather modification and control.** A person or entity

may not engage in activities for weather modification and control except under and in accordance with a license and a permit issued by the department authorizing the activities."

**Section 4.** Section 85-3-202, MCA, is amended to read:

**"85-3-202. Department to review applications.** (1) The department shall review all applications for

weather modification and control activities/licenses. The department shall prepare a report and an environmental impact statement pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant. The department is required to conduct an environmental analysis pursuant to Title 75, chapter 1, part 2, as the necessary level of environmental review for a weather modification license pursuant to this chapter.

(2) The department may provide by rule for exempting from the license and permit requirements of this chapter:

- (a) research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;
- (b) laboratory research and experiments;
- (c) activities of an emergency character for protection against fire, frost, sleet, hail, or fog; and
- (d) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

**Section 5.** Section 85-3-203, MCA, is amended to read:

Formatted: Highlight

Commented [HC1]: AMENDMENT #1:

The highlighted language has been edited in response to a comment by DNRC. In the prior bill version, this sentence read as follows: The department is required to conduct only the type of environmental assessment that would be conducted for a routine action with limited environmental impact pursuant to Title 75, chapter 1, part 2, as the necessary level of environmental review for a weather modification operation licensed pursuant to this chapter.

DNRC's comment was as follows:  
"This provision may be problematic as it limits the department to conduct not more than an environmental assessment. An exception from an EIS may be legal under MEPA (DNRC legal and/or Legislative staff should review), however, this provision alone is likely to create controversy for this legislation. A cleaner solution would be to instruct the department to conduct an environmental analysis pursuant to the relevant statute and let the MEPA process play out. While cloud seeding may not be likely to trigger an EIS, this legislation does not limit weather modification to only cloud seeding. What about future climate engineering technologies? Under this draft bill those activities would also be exempt from a complete environmental analysis."

Formatted: Highlight

Unofficial Draft Copy

As of: 2020/06/18 06:55:54 2020/08/05 04:14:13

Drafter: Corina Hach, 406-444-4026

PD 00060013

67th Legislature

1 "85-3-203. Licenses -- application requirements and qualifications of licensees. (1) The  
2 department shall adopt rules setting forth the requirements and fee for a license to engage in activities for  
3 weather modification and control. The requirements established by rule must include but are not limited to the  
4 applicant providing evidence that the following criteria have been met:  
5 (a) the applicant has published sufficient notice of intention in accordance with 85-3-208;  
6 (b) the applicant has furnished proof of financial responsibility in accordance with 85-3-211;  
7 (c) the individual responsible for operation is a certified weather modification operator or manager  
8 certified by the weather modification association and has demonstrated competence in the field of meteorology  
9 to the satisfaction of the department; and  
10 (d) the weather modification and control activities to be conducted have been determined by the  
11 department to be for the general welfare and the public good. That determination must be based on a finding of  
12 whether the operation:  
13 (i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards,  
14 provide economic benefits for the people of Montana, or advance scientific knowledge;  
15 (ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public  
16 health, safety, and welfare and to the environment; and  
17 (iii) will adversely affect another operation for which a license has been issued.  
18 (2) The department shall adopt license modification and suspension guidelines and requirements by  
19 rule, must be issued, in accordance with procedures and subject to conditions the department may by rule  
20 establish to effectuate the provisions of this chapter, to applicants who demonstrate competence in the field of  
21 meteorology to the satisfaction of the department.  
22 (3) If the applicant is an organization, these requirements must be met by the individual who will be in  
23 charge of the operation for the applicant."

24  
25 Section 6. Section 85-3-204, MCA, is amended to read:

26 "85-3-204. Licenses -- term and renewal. The license shall initially be issued for a period to expire at  
27 the end of the calendar year in which it is issued and, if of 1 year. If at the end of a license period, the licensee  
28 possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at



Unofficial Draft Copy

As of: 2020/06/18 06:56:54 2020/08/05 04:14:13

Drafter: Corina Hach, 406-444-4026

PD 00060013

67th Legislature

1 ~~the expiration of the period meets the requirements developed by department rule in 85-3-203, the department~~  
2 ~~shall upon application by the licensee renew the license. After the initial license period, the department may~~  
3 ~~renew a license for up to 5 years at a time with an annual review."~~

4  
5 **Section 7.** Section 85-3-208, MCA, is amended to read:

6 **"85-3-208. Notice of intention to conduct weather modification activities to apply for permit.**

7 Before undertaking any weather modification and control activities, the applicant for a permit license shall file  
8 with the department a notice of intention."

9  
10 **Section 8.** Section 85-3-209, MCA, is amended to read:

11 **"85-3-209. Notice of intention -- contents.** The notice of intention shall set forth at least the

12 following:

- 13 (1) the name and address of the applicant;  
14 (2) the nature, purpose, and objective of the intended operation and the person or organization on  
15 whose behalf it is to be conducted;  
16 (3) the area in which and the approximate time of year during which the operation will be conducted;  
17 (4) the area which is intended to be affected by the operation;  
18 (5) the materials and methods to be used in conducting the operation."

19  
20 **Section 9.** Section 85-3-210, MCA, is amended to read:

21 **"85-3-210. Publication of notice of intention.** (1) ~~The department shall have the notice of intention,~~  
22 ~~or that portion thereof including the items specified in 85-3-209, published. An applicant for a license must~~  
23 publish notice of intention to conduct weather modification activities at least once a week for 2 consecutive  
24 weeks in a newspaper having a general circulation and published within any county in which the operation is to  
25 be conducted and in which the affected area is located, or if the operation is to be conducted in more than one  
26 county or if the affected area is located in more than one county or is located in a county other than the one in  
27 which the operation is to be conducted, then in newspapers having a general circulation and published within  
28 each of the counties.

**Commented [HC2]: AMENDMENT #2:**

In the previous bill draft version, this section included language stating that licenses would expire on June 30th of each year and did not include the possibility of a 5 year license period.

The edits in this version were made in response to the following comment by DNRC:

"Limiting the license to one year seems challenging for implementation for both the department and the licensee. Weather modification projects take at least 3 to 5 years to verify results. Perhaps a review after one year leaving the department the discretion to renew for up to 5 years with an annual review. The department's review would ensure that the operation still meets the provision of 85-3-203 (d)"

Unofficial Draft Copy

As of: 2020/06/18 06:55:54 2020/08/05 04:14:13  
Drafter: Corina Hach, 406-444-4026

PD 00000013

67th Legislature

(2) ~~The applicant shall reimburse the department for the costs of publication of the notice of intention.~~ The notice of intention must include the details provided in 85-3-209."

**Section 10.** Section 85-3-211, MCA, is amended to read:

**"85-3-211. Proof of financial responsibility by applicant - liability insurance.** ~~Proof of financial responsibility may be furnished by an applicant by showing, to the satisfaction of the department, the applicant's ability to respond in damages for liability that might reasonably be attached to or result from the applicant's weather modification and control activities.~~ The department may not issue a license unless the applicant furnishes proof of liability insurance coverage insuring the applicant against legal liability for damages resulting from negligence in carrying out weather modification and control activities in the amount of \$1,000,000."

**Section 11.** Section 85-3-213, MCA, is amended to read:

**"85-3-213. State special revenue fund.** All license ~~and permit~~ fees and fines collected under this chapter, other than those collected in a justice's court, ~~shall must~~ be deposited in the state special revenue fund for appropriation by the legislature and use by the department in the administration of this chapter ~~or as appropriated by the legislature.~~"

**Commented [HC3]: AMENDMENT #3:**

In the prior version of this bill, the liability insurance policy minimum was \$100,000.

The increase reflected in this bill version was made in response to the following comment by DNRC:

"Nothing in this section caps limits in damages an operator could be found responsible for. It sets a floor on amount of insurance coverage applicant would have to show proof of. The legislature should encourage the operator to carry a higher level of coverage by setting the minimum liability policy to \$1 million"

Formatted: Highlight

**Section 12.** Section 85-3-214, MCA, is amended to read:

**"85-3-214. Termination of licenses ~~and permits~~.** After notice to the licensee and a reasonable opportunity for a hearing, the department may modify, suspend, revoke, or refuse to renew any license ~~or permit~~ issued if it appears that the licensee no longer possesses the qualifications necessary, if it appears that the licensee has violated any of the provisions of this chapter, or, in the case of a modification, if it appears that it is necessary for the protection of the health or the property of any person."

**Section 13.** Section 85-3-301, MCA, is amended to read:

**"85-3-301. Records of operations maintained by licensees.** A licensee shall keep and maintain a record of all operations conducted by the licensee under the license ~~and each permit, showing for a term of 10~~ years. The records must show:



**Unofficial Draft Copy**

As of: 2020/06/18 06:56:54 2020/08/05 04:14:13

Drafter: Corina Hach, 406-444-4026

PD 00060013

67th Legislature

- (1) the method employed;
- (2) type of equipment used;
- (3) kinds and amounts of material used;
- (4) times and places of operation of the equipment;
- (5) names and addresses of all individuals participating or assisting in the operation;
- (6) any other general information that the department may require."

**Section 14.** Section 85-3-302, MCA, is amended to read:

**"85-3-302. Reports of operations.** The department shall ~~require written reports, in a manner as it provides, of each operation for which a permit is issued. The department shall also require reports from any organization that is exempt from license and permit requirements as provided in 85-3-202 adopt rules requiring written reports for each weather modification or control activity that is conducted by a licensee.~~"

**NEW SECTION. Section 15. {standard} Repealer.** The following sections of the Montana Code

Annotated are repealed:

- |           |                                                         |
|-----------|---------------------------------------------------------|
| 85-3-102. | Standards for research in weather modification control. |
| 85-3-206. | Permits -- requirements and hearing.                    |
| 85-3-207. | Separate permit for each operation.                     |
| 85-3-212. | Permit fee.                                             |

**NEW SECTION. Section 16. Effective date.** [This act] is effective October 1, 2021.

- END -